Read

SUPREME COURT OF THE UNITED STATES.

No. ~~330.~~ 215.

SUN CHEONG KEE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *Northern District of California:*

Pleas before the judges of the circuit court of the United States in and for the northern district of California, at the court-house, in the city of San Francisco, at the regular June term, 1864.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Be it remembered, that at the regular June term, 1864, before the Hon. Stephen J. Field, associate justice of the U. S. Supreme Court, and Hon. Ogden Hoffman, U. S. district judge, at the court-house, in the city of San Francisco, came the United States of America, by their attorney, William H. Sharp, esq., and brought into court before the aforesaid judges thereof their certain complaint or declaration against Sun Cheong Kee, defendant, of a plea of debt, which said complaint was filed on the 16th day of December, in the year of our Lord one thousand eight hundred and sixty-three, and follows in these words, that is to say:

2 In the circuit court of the United States of America in and for the northern district of California.

THE UNITED STATES, plaintiffs,
ag't
SUN CHEONG KEE, defendants.

Complaint.

The above-named plaintiffs complain against the above-named defendants, partners in trade and residents of said district, and for cause of action state as follows:

That defendants, on or about the 12th day of August, 1862, imported from the port of Hong Kong, in the empire of China, into the collection district of San Francisco, in said northern district of California, certain goods, wares, and merchandise, consisting vegetables, fire-crackers, rice,

3 &c. That said goods and merchandise were subject to a duty of fourteen hundred and fifty-two 55-100 dollars in gold coin of the United States, payable to plaintiffs upon being so imported as aforesaid.

That said sum of fourteen hundred and fifty-two 55-100 dollars was duly demanded by plaintiffs from said defendants, and the same was not paid to plaintiffs, except the sum of two hundred and eleven 70-100 dollars. Wherefore plaintiffs demand judgment against defendants for said sum of twelve hundred and forty 85-100 dollars, in gold coin of the United States, with legal interest and costs.

San Francisco, Dec'r 14th, 1863.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed Dec'r 16, 1863.

HENRY C. HYDE, *Clerk.*

4 *Summons.*

UNITED STATES OF AMERICA:

In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES, plaintiffs,
vs.
SUN CHEONG KEE & Co., defendants.

Action brought in the said circuit court and the complaint filed in the city and county of San Francisco, in the office of the clerk of said circuit court.

The President of the United States of America to Sun Cheong Kee & Co., greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiffs, in the circuit court of the United States for the northern district of California, and to file your plea, answer, or demurrer to the complaint filed therein, in the office of the clerk of said court, in the city and county of San Francisco, within ten days, (exclusive of Sundays, and day of service,) after the service on you of this summons, if served in this county, or if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover the sum of twelve hundred and forty 85-100 dollars ($1,240 85-100,) in gold coin of the United States, for duties upon certain goods, wares, and merchandise, consisting of vegetables, fire-crackers, rice, &c., imported by defendants from the port of Hong Kong, in the empire of China, into the collection district of San Francisco, northern district of California, on or about the 12th of August, 1862, also for legal interest and costs of suit; and if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, this 16th day of December, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth.

[SEAL.] HENRY C. HYDE, *Clerk.*

Endorsed: Filed this 26 day of Dec'r, 1863.

HENRY C. HYDE, *Clerk.*

Marshal's return.

OFFICE OF THE MARSHAL OF THE NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I hereby certify that I received the within summons on the 22d day of December, A. D. 1863, and personally served the same on the 22d day of December, A. D. 1863, by delivering to Sun Cheong Kee & Co., said defendant, personally, in the city of San Francisco, a copy of said summons.

Dated San Francisco, this the 22d day of December, A. D. 1863.

CHARLES W. RAND, *U. S. Marshal,*
By M. R. GRANT, *Deputy Marshal.*

Extension of time to plead.

U. S. C. C., northern district California.

UNITED STATES
vs.
SUN CHEONG KEE & Co.

Let the defendants have until January 10th, 1864, to answer or demur in above case.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Dec. 30, 1863.

H. C. HYDE, *Clerk.*

C. C. U. S., N. D., Cal'a.

UNITED STATES
vs.
SUN CHEONG KEE & Co.

Let the defendants have ten days' further time to answer or demur in above cases.

Dated January 9, 1863. WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed Jan'y 9, 1864. HENRY C. HYDE, *Clerk.*

8 *Answer.*

C. C. U. S., northern district of California.

THE UNITED STATES
vs.
SUN CHEONG KEE & CO.

And come the said defendants, Sun Cheong Kee & Co., by James M. Seawell and John W. Dwinelle, their attorneys, and answering the complaint of the said plaintiffs, say:

That on the 13th day of August, A. D. 1862, the said defendants made entry of said goods, wares, and merchandise with the United States collector of customs at and for the port of San Francisco.

That said collector at the time of said entry decided that said goods, wares, and merchandise were liable to a duty of two hundred and eleven 70-100 dollars, and were exempt from any higher or greater duty than said sum of two hundred and eleven 70-100 dollars. That the said defendants have never given notice in writing or otherwise to said collector of their dissatisfaction with his said decision, and have never appealed from said decision. That on the said 13th day of August, A. D. 1862, the said defendants paid the said sum of two hundred and eleven 70-100 dollars to the said

9 plaintiffs.

That afterwards, to wit, on the said 13th day of August, A. D. 1862, the said collector and the U. S. naval officer at and for the said port of San Francisco gave a permit to said defendants for the delivery of said goods, wares, and merchandise, and certified that the said defendants had paid the duties thereon.

That afterwards, to wit, on the said 13th day of August, A. D. 1862, the said goods, wares, and merchandise were delivered by the proper officer of the United States to the said defendants.

That afterwards, and before the first day of September, A. D. 1862, all of said goods, wares, and merchandise were sold by said defendants without any notice or knowledge that the same or any part thereof were subject to any higher rate or amount of duty than that already paid as aforesaid.

That all of said goods, wares, and merchandise were sold by said defendants before any further or greater sum than said sum of $211 70 was demanded by said plaintiffs, or by any one for said plaintiffs, and no further or greater sum than said sum of $211 71 was demanded by said

10 plaintiffs or said collector, before the 15th day of September, A. D. 1862. That by the laws in force prior to the first day of August, A. D. 1862, the said goods, wares, and merchandise were subject to a duty of two hundred and eleven 70-100 dollars, and no more. That if the said collector at the time of said decision had estimated the amount of said duties according to the provisions of the act of Congress, passed July 14, 1862, entitled An act increasing the duties on imports, and for other purposes, they would have amounted to the said sum of $1,452 55. That no copy of said last-mentioned act had reached the State of California, and the provisions thereof were unknown to the people of the State of California at the time when said goods were entered, and at the time when they were sold as aforesaid. That when said defendants sold said goods they did not include as a part of the price thereof any further duties than they had already paid.

That if said defendants are compelled to pay the amount of the plain-

11 tiffs' demand in this action they will sustain a loss $1,240 85-100.

Wherefore the said defendants say that the said plaintiffs ought not to have and maintain their aforesaid action.

Jan'y 19, 1864.

J. M. SEAWELL,
JOHN W. DWINELLE, *for Def'ts.*

Endorsed: Filed Jan'y 19, 1864.

H. C. HYDE, *Clerk.*

12 *Stipulation waiving jury and setting cause.*

Circuit court U. S., northern district Cal.

UNITED STATES
vs.
SUN CHEONG KEE & Co.

It is stipulated that above case be tried by the court without a jury; that said case shall not be tried before Monday, 20th inst.

June 10, 1864.

WM. H. SHARP, *U. S. Att'y.*
J. M. SEAWELL, *Att'y for Def'ts.*

13 *Order setting cause for June* 16, '64.

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 13th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Stephen J. Field, associate justice of the U. S. Supreme Court, Hon. Ogden Hoffman, U. S. district judge.

UNITED STATES
vs.
SUN CHEONG KEE. } At common law.

On motion of U. S. attorney, cause set for Thursday June 16th, 1864.

14 *Proceedings in court, June* 16, '64.

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the 16th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court, Hon. Ogden Hoffman, U. S. district judge.

THE UNITED STATES
vs.
SUN CHEONG KEE } At common law.

And now at this day, this cause having been set for to-day, came on to be heard, W. H. Sharp, U. S. attorney appearing for plaintiffs, and J. M. Seawell, esq., for defendant. A jury having been waived by stipulation duly filed in the case, the case was duly argued by respective counsel, upon the motion of Mr. Sharp for judgment upon the pleadings, and submitted to the court for its considertion and decision.

15 *Order for judgment, June* 17, '64.

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Friday, the 17th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court, Hon. Ogden Hoffman, U. S. district judge.

THE UNITED STATES
vs.
SUN CHEONG KEE. } At common law.

And now at this day, this cause having been duly argued and submitted to the court yesterday, and due deliberation had in the premises, it is ordered

that judgment be entered herein in favor of the United States and against said defendant for the sum of twelve hundred and forty 85-100 dollars ($1,240 85) for unpaid duties, and one hundred and thirty-eight 95-100 dollars ($138 95) legal interest thereon.

16 *Order setting aside order for judgment.*

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Wednesday, the 27th day of July, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court.

THE UNITED STATES
vs.
SUN CHEONG KEE.

And now at this day come the respective parties, by their counsel, and Wm. H. Sharp, esq., United States attorney, moves that the order for judgment made herein on the 17th day of June, 1864, be vacated; to which motion the defendant, by his counsel, J. M. Seawell, esq., objects; and the objection being overruled, defendant excepted to such ruling. Whereupon it is ordered that the order made herein on the 17th day of June, 1864, for
17 judgment in favor of the United States be, and the same is hereby, vacated and set aside. And to this order defendant, by his said counsel, excepts. And it is further ordered that this cause be set for a hearing on Thursday, the 4th day of August, A. D. 1864.

18 *Order for judgment, entered on Aug. 6th, 1864.*

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Saturday, the 6th day of August, in the year of our Lord one thousand eight hundred and sixty-four.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court.

THE UNITED STATES
vs.
SUN CHEONG KEE.

And now come the said parties, by their respective counsel, and the order for judgment hereinbefore made having been heretofore set aside, and a stipulation waiving a jury trial being on file herein, the trial proceeded before the court sitting without a jury. Thomas Hill and John Hunt, jr., were sworn and testified on the part of the said United States, and to the
19 examination of the said witnesses the def't, by his counsel, objected, which objection was overruled by the court, to which ruling def't then and there excepted; and now, the testimony being closed, and the cause being duly submitted, and due deliberation being had, the court files the following findings: It is therefore ordered that judgment be entered herein in accordance with the said findings.

Findings.

20 Circuit court of the United States for the northern district of California.

THE UNITED STATES
vs.
SUN CHEONG KEE.

This cause coming on regularly for trial, and a jury being expressly

waived by stipulation between the hereto, filed with the clerk of this court, after hearing the pleadings, proofs, and argument of the respective counsel herein, the court find as facts as follows:

That on the 13th day of August, 1862, defendant imported into the port of San Francisco from the empire of China, certain goods and merchandize, consisting of vegetables, fire-crackers, rice, &c.

That at the date of said importation and entry of the same at the custom-house of said port of San Francisco, said goods and merchandise were subject to a duty of $1,452 55-100 under the tariff act of the 14th day of July, 1862.

That on said 13th day of August, 1862, said defendant paid to plaintiffs the sum of 211 70-100 on account of said duties, and that there
21 is now due and owing from said defendant to plaintiff the sum of $1,240 85-100, with interest at the rate of six per cent. per year from said 13th day of August, 1862, in gold coin of the United States, for duties on said goods and merchandise, amounting together to the sum of thirteen hundred and eighty-eight 10-100 dollars.

And as a conclusion of law the court find that plaintiffs are entitled to a judgement against defendant for the said sum of thirteen hundred and eighty-eight 10-100 dollars, payable in gold coin of the United States, for duties, with the costs of this action.

San Francisco, August 6th, 1864.

(Signed) FIELD, J.

Endorsed: Filed Aug. 6th, 1864.

GEO. C. GORHAM, *Clerk.*

22 *Bill of exceptions.*

In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES vs. SUN CHEONG KEE. } Bill of exceptions.

Be it remembered, that issue having been joined in this cause, the parties, by their respective attorneys, filed a stipulation in writing, waiving a jury in the action, and consenting that the same be tried and determined by the court.

And afterwards, on the 16th day of June, 1864, the above cause coming on for trial, the counsel for plaintiffs moved for judgment, (on the pleadings herein, and the court ordered judgement,) according to the prayer of the complaint.

Afterwards, on the 27th day of July, 1864, the counsel for plaintiffs moved the court to vacate and set aside said order for judgment, and the court granted said motion; to which ruling the counsel for defendant then and there duly excepted.

Afterwards, on the 6th day of August, 1864, said cause came on to be tried before the court, the parties being present by their respective counsel,
23 and the counsel for the plaintiffs, to maintain the issue on their part, produced Thomas Hill and John Hunt, jr., as witnesses; and the counsel for defendant did then and there object to said witnesses being examined as irregular, but the court overruled said objection, and to which ruling the defendant's counsel then and there duly excepted.

And afterwards, to wit, on the 6th of August, 1864, the court filed its decision, and judgment was duly entered therein; to which said decision and judgment the counsel for defendant then and there duly excepted.

And because none of said exceptions so offered and made to the opinions

and decisions of the court and the said justice appear of record, the said justice has to this bill of exceptions set his hand and seal this sixth day of August, A. D. eighteen hundred and sixty-four.

[SEAL.] STEPHEN J. FIELD,
Circuit Judge, tenth circuit.

Endorsed: Filed Aug. 13th, 1864.

GEO. C. GORHAM, *Clerk*,
Per W. F. HUESTIS, *Dep'ty Clerk.*

24 *Judgment.*

And on the 8th day of August, in the year A. D. one thousand eight hundred and sixty-four, judgment was entered in said cause in words, terms, and figures as follows, to wit:

Circuit court of the United States, tenth circuit, northern district of California. June term, 1864.

THE UNITED STATES
vs.
SUN CHEONG KEE. } At common law.

And now, on the 6th day of August, A. D. 1864, come the said parties by their respective counsel, and the order for judgment hereinbefore made having been heretofore set aside, and a stipulation waiving a jury trial being on file herein, the trial proceeded before the court, sitting without a jury; and the testimony being heard and the cause submitted, the court, after due deliberation in the premises, filed with the clerk the following findings:

That on the 13th day of August, 1862, defendant imported into the port of San Francisco, from the empire of China, certain goods and merchan-
25 dize, consisting of vegetables, fire-crackers, rice, &c.

That at the date of said importation and entry of the same at the custom-house of said port of San Francisco, said goods and merchandize were subject to a duty of $1,452 55-100 under the tariff act of the 14th day of July, 1862.

That on said 13th day of August, 1862, said defendant paid to plaintiffs the sum of 211 70-100 on account of said duties, and that there is now due and owing from said defendant to plaintiffs the sum of $1,240 85-100, with interest, at the rate of six per cent. per year, from said 13th day of August, 1862, in gold and silver coin of the United States, for duties on said goods and merchandize, amounting together to the sum of thirteen hundred and eighty-eight 10-100 dollars.

And as a conclusion of law the court finds that plaintiffs are entitled to a judgment against defendant for the said sum of thirteen hundred and eighty-eight 10-000 dollars, payable in gold and silver coin of the United
26 States, for duties, with the costs of this action. And it was thereupon ordered that judgment be entered in accordance with the said findings.

Wherefore, by reason of the law and the premises, it is ordered and adjudged that the said plaintiffs do have and recover of and from the said defendant the sum of thirteen hundred and eighty-eight 10-100 dollars, in gold [and silver] coin of the United States, together with his costs of this action, taxed at , and that plaintiffs have execution therefor.

Judgment entered this 8th day of August, A. D. 1864.

GEO. C. GORHAM, *Clerk.*

Amended, by inserting words "and silver" under order of the court, entered upon the minutes, October 8th, 1864.

GEO. C. GORHAM, *Clerk.*

27 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the tenth circuit and northern district of California, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court before you between the United States and Sun Cheong Kee, a manifest error hath happened to the great damage of the said Sun Cheong Kee, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to cor-
28 rect that error, what of right and according to the law and custome of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

In testimony whereof, the clerk of the circuit court of the United States for the northern district of California hath hereunto set his hand and affixed the seal of said circuit court this 12th day of August, A. D. 1864.

[SEAL.] GEO. C. GORHAM,
Clerk U. S. circuit court, tenth circuit, northern dist. of California.

30 Filed Aug. 12, 1864.

GEO. C. GORHAM, *Clerk.*

31 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the tenth circuit and northern district of California, wherein Sun Cheong Kee is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stephen J. Fields, one of the justices of the said Supreme Court, this thirteenth day of August, in the year of our Lord one thousand eight hundred and sixty-four.

STEPHEN J. FIELDS, *Circuit Judge.*

Service admitted this 13th day of August, A. D. 1864.

WM. H. SHARP, *U. S Att'y.*

Filed August 13th, 1864.

GEO. C. GORHAM, *Clk,*
P'r W. F. HUESTIS, *D. C.*

32 *Bond.*

In the Supreme Court of the United States.

SUN CHEONG KEE, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, defendant in error.

In the circuit court of the United States, northern district of California.

UNITED STATES OF AMERICA
vs.
SUN CHEONG KEE.

Know all men by these presents that we, Sun Cheong Kee, George Schultz, and Cornelius Koopmanschop, of the city of San Francisco, in the State of California, are held and firmly bound unto the United States of America in the sum of three thousand dollars in gold coin of the United States of America, to be paid to the said United States of America or assigns; for the which payment, well and truly to be made, we do bind ourselves, our
33 heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the twelfth day of August, one thousand eight hundred and sixty-four.

The condition of the above obligation is such that whereas the above-named Sun Cheong Kee has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgement rendered in the foregoing entitled suit by the circuit court of the United States for the tenth circuit and northern district of California, if the above-named Sun Cheong Kee shall prosecute his said writ of error to effect, and answer all debt, damages, and costs, if he shall fail to make good his plea, then the above obligation to be void; otherwise, to remain in full force and virtue.

SUN CHEONG KEE. [SEAL.]
C. SWOPMANSCHOP. [SEAL.]
GEORGE SCHULTZ. [SEAL.]

Signed, sealed, and delivered in the presence of—(the words "lawful money" being erased and the words "in gold coin" being interlined before execution—)

J. M. SEAWELL.

Endorsed: Filed Aug. 12, '64.

GEO. C. GORHAM, *Clerk.*

34 And afterwards, to wit, on the eighth day of October, A. D. 1864, the following order was duly entered of record in said cause, to wit:

Order amending judg't

At a regular term of the circuit court of the United States of America in and for the northern district of California, held at the court-house, in the city of San Francisco, on Saturday, the 8th day of October, in the year A. D. 1864.

Present: Hon. Stephen J. Field, associate justice of the U. S. Supreme Court.

THE UNITED STATES
vs.
SUN CHEONG KEE.

And now, at this day, on motion of Delos Lake, esq., U. S. district attorney, it is ordered that the judgment herein entered on the 8th day of August,

A. D. 1864, be amended by inserting between the words "gold" and
35 "coin" the words "and silver," and that the same amendment be made wherever applicable in all references thereafter made to said judgment in any paper or proceeding in this cause.

36 *Clerk's certificate.*

In the circuit court of the United States in and for the northern district of California.

THE UNITED STATES } vs. SUN CHEONG KEE. } At common law.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I, George C. Gorham, clerk of the circuit court of the United States in and for the northern district of California, do hereby certify that the foregoing thirty-five (35) pages contain a full, correct, and faithful transcript of the record of the proceedings in the above-entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the court-house, in the city of San Francisco, this 29th day of October, A. D. 1864, and of the independence of the United States the eighty-ninth year.

[SEAL.]

GEO. C. GORHAM,
Clerk Circuit Court U. S., Nor. Dis't California.

37 In the Supreme Court of the United States.

SUN CHEONG KEE, pl'ff in error, vs. THE UNITED STATES, def't in error.

Assignment of errors.

The court below committed the following errors:

I. In making the order for judgment in favor of the United States, on the 17th day of June, 1864.

II. In setting aside said order for judgment; in granting a new trial; and in retrying said cause.

III. In not finding as matters of fact that the allegations of the answer are true.

IV. In rendering judgment in favor of the United States.

V. In rendering judgment for the United States "payable in gold coin of the United States for duties."

JOHN W. DWINELLE,
Att'y for Pl'ff in error.

Filed December 8, 1864.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

SUN CHEANG KEE, plaintiff in error,
vs.
THE UNITED STATES, defendant in error.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
~~TITIAN J. COFFEY,~~
~~Special Counsel for United States.~~

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

SUN CHEANG KEE, plaintiff in error,
vs.
THE UNITED STATES, defendant in error.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

This action was brought in the circuit court to recover certain unpaid duties on merchandise imported into the port of San Francisco.

The cause was tried by the court without a jury, and the whole case is stated in the findings of the circuit judge, at page 6 of the printed record.

The judge finds that the merchandise was subject to a duty of $1,452 55, under the tariff act of July 14, 1862; that the defendant had paid $211 70 on account, and owed the balance.

The bill of exceptions presents no question as to the correctness of the findings of fact, but it is claimed that no action can be maintained for unpaid duties, or, in other words, that the facts found do not support the conclusion of law.

The action for unpaid duties has been so repeatedly maintained that a serious discussion of the subject would seem to be unnecessary. (1 Gallison, 239; United States *vs.* Lyman, 1 Mason, 498; 9 Cranch, 134; Meredith *vs.* The United States, 13 Peters, 493.)

Nor is it necessary to combat the proposition that because, through mistake of the collector or ignorance of both the collector and importer, the latter obtained possession of his goods

without paying duties, he is discharged from all legal obligation to pay.

The collector does not fix the rate of duty; the law establishes it. Nor is the collector legally bound to know the law more than is the importer. But it is sufficient to say that no such question is presented by the bill of exceptions.

The only question really presented by the bill of exceptions arises under the exception to the conclusion of law that the plaintiff was entitled to judgment payable in *gold coin of the United States for duties.*

We submit that there is no error in this conclusion of law.

1. The law expressly provides that all duties shall be paid in gold and silver. Hence, whether duties are paid before or after delivery of merchandise, the collector is not permitted to receive anything but gold and silver. If, therefore, a tender of paper money would not be a valid defence for the reason that the collector had no right to receive it, *a fortiori* the same kind of paper money would be equally ineffectual to satisfy the debt after it had ripened into judgment; and if a debt owing for duties can only be satisfied by payment of gold and silver, surely it is not error for the court to render a judgment in terms payable in the only kind of money that will satisfy the debt.

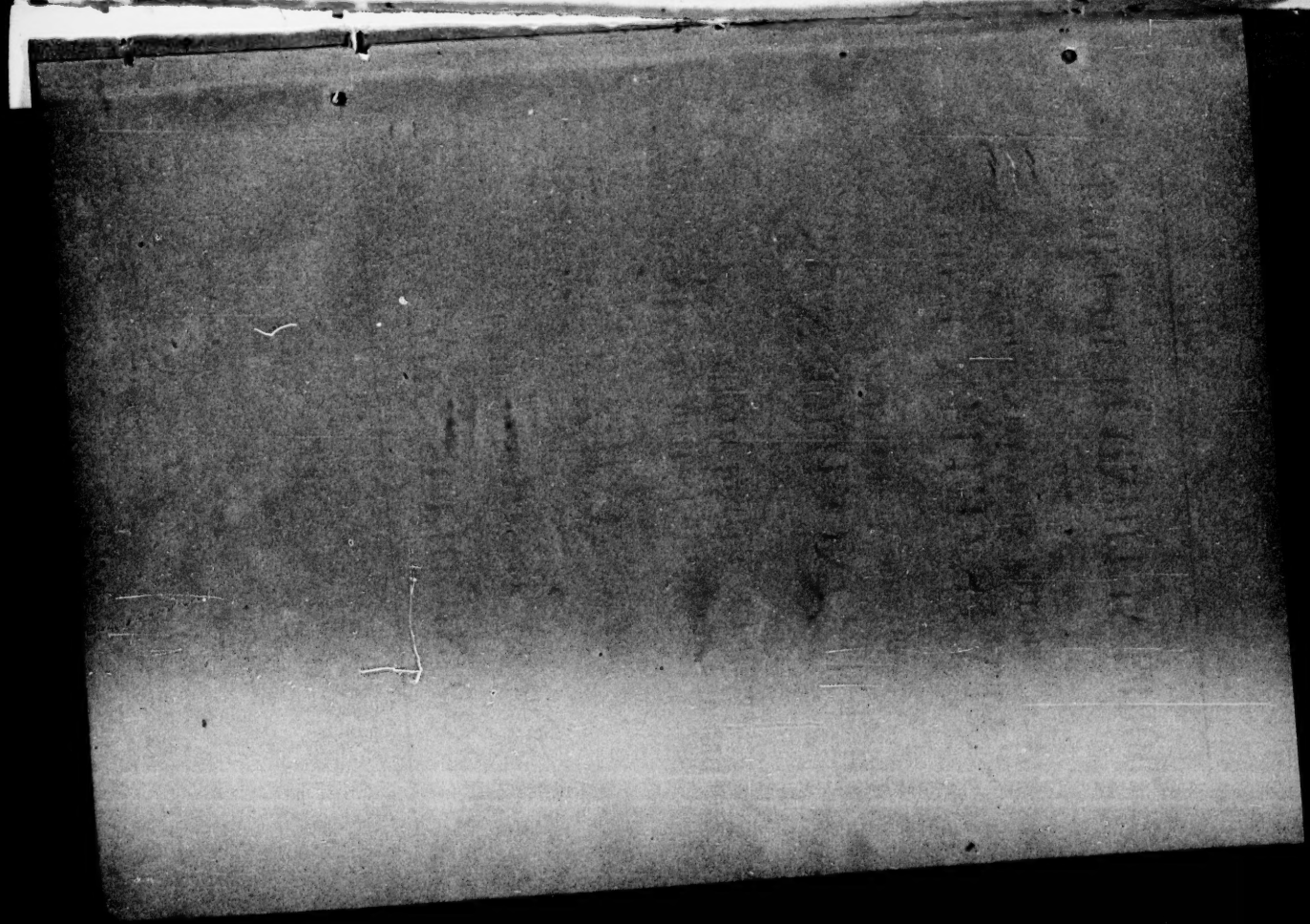
2. But if a debt for duties may be satisfied in any lawful money of the United States, then the language used in the finding and judgment, "payable in gold coin of the United States," can do no harm. They are equivalent to the words, "lawful money of the United States." As a legal-tender note for twenty dollars is the exact equivalent for twenty dollars in gold, the defendant in the judgment can satisfy the judgment by paying in the equivalent currency.

The proceedings of the circuit court in setting aside the first judgment cannot be reviewed in this court. They were

purely matters of discretion. It does not appear in the bill of exceptions why the judgment was set aside, and it will be presumed it was done on proper grounds and for good reasons. Probably it was because, through inadvertence, no finding of facts was filed.

We ask that the judgment of the circuit court be affirmed.

JAMES SPEED,
Attorney General, and
DELOS LAKE,
For Defendant in Error.



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IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA.

ERROR

TO THE

Circuit Court of the United States in and for the Northern District of California.

SUN CHEONG KEE,

PLAINTIFF IN ERROR.

vs.

THE UNITED STATES,

DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR.

Francis, Valentine & Co., Printers, 517 Clay Street.

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IN THE

Supreme Court of the United States.

Error to the Circuit Court of the United States for the Northern District of California.

SUN CHEONG KEE,
Plaintiff in Error,
vs.
THE UNITED STATES,
Defendant in Error.

HISTORY OF THE CASE.

This is an action, in the nature of an action of debt, to recover the sum of $1,240 55, being the amount of certain duties alleged to be due and unpaid by Sun Cheong Kee, who was defendant below, to the United States.

On or about the 12th day of August, 1862, the defendant imported from the port of Hongkong in China, into the Collection District of San Francisco, certain goods, wares, and merchandise, and on the same day made entry thereof with the Collector. The duties to

which said goods were subject, if estimated according to the provisions of the Act of July 14th, 1862, would amount to $1,452 55; but if estimated according to the provisions of the laws in force at and before the time when said Act went into effect, would amount to the sum of $211 70.

The defendant alleges, that at the time of the entry the Collector decided that the goods were subject to a duty of $211 70, and no more; which amount was duly paid. A permit in the usual form was thereupon given for the delivery of the goods, and they were accordingly delivered to the defendant; and before the defendant knew that said goods were subject to any further duty, and before any further duties were demanded, said goods were sold by him. At the time of the entry, neither the Collector nor the importer knew of the passage of the Act of July 14th, 1862, and no copy of said Act had reached the State of California.

The case was tried on the 17th day of June, 1864, when the case was submitted on the defendant's answer—the District Attorney, who moved for judgment, admitting for the purposes of his motion, that the answer was true, but contending that it was insufficient.

On the next day, an order for judgment was made in favor of the United States for the amount claimed.

On the 27th day of July, 1864, the District Attorney moved that the order for judgment in favor of the United States be vacated, and a new trial granted, which motion was, notwithstanding the objections of counsel for defendant, granted. No ground was al-

leged for this motion, and no previous notice of it had been given.

On the 6th day of August, 1864, a new trial was had (against which defendant's counsel protested), and judgment given for the United States for $1,388 10, "payable in gold coin of the United States, for duties."

In the Supreme Court of the United States.

SUN CHEONG KEE

v.

THE UNITED STATES.

ASSIGNMENT OF ERRORS.

The Court below committed the following errors:

I. In making the order for judgment in favor of the the United States on the 17th day of June, 1864.

II. In setting aside said order for judgment, in granting a new trial, and in retrying said cause.

III. In not finding, as matters of fact, that the allegations of the answer are true.

IV. In rendering judgment in favor of the United States.

V. In rendering judgment for the United States, "payable in gold coin of the United States, for duties."

ARGUMENT.

This Court will not be astute to sustain the judgment in this case. The claim of the Government is not only inequitable, but would, if made by a private individual, be rejected as fraudulent. The United States, in such an action, if entitled to recover at all, can recover only by virtue of a law whose operation is, in this particular instance, unjust and oppressive. The Government stands here for law. It should get nothing but law.

We shall consider the errors assigned in their order.

I.

The Court erred in making the order for judgment in favor of the United States on the 17th of June, 1864.

II.

The Court erred in setting aside said order for judgment, in granting a new trial, and in retrying said cause.

These two assignments of error, although apparently inconsistent with each other, are not really so. The defendant was, under the admissions made by the plaintiff on the motion for judgment on the pleadings, entitled to a judgment in his favor. For the purposes of that motion, the District Attorney admitted that the answer was true, and read it in evidence. If, therefore, we can show that the answer was sufficient, we are entitled to judgment, and if we are entitled to

judgment, the order for judgment in favor of the United States was erroneous.

The error in setting aside this order for judgment, and in granting a new trial, consisted in this. We do not complain of the granting of a new trial because we think the first order for judgment was proper, but because, in pursuance of the statute in such case made and provided, the Court, in rendering its decision, would have been bound to find as matters of fact that our answer was true, and we might have gone to the Supreme Court with that point in our favor. Moreover, a party has no right to complain of a ruling in his favor, for he has got all he asked for. It is also unjust to the losing party to put him to the trouble and expense of a new trial, which must have the same result as the former. The defendant in this case had also a right to the admissions made by the District Attorney on the motion for judgment. He preferred, instead of giving us an opportunity to produce witnesses to maintain the issue on our part, to admit our answer to be true. Suppose we had a hundred witnesses at the first trial, and the plaintiff should, by admitting our answer to be true, prevent us from producing any of our witnesses. It is unjust to set aside the verdict at the bidding of the plaintiff, and require us to summon the hundred witnesses anew, and pay the fees for their attendance, to say nothing of time or trouble.

From these considerations, it also follows that the Court erred—

III.

In not finding as matters of fact that the allegations of the answer are true. Do, then, the facts as stated in the answer constitute a defense to the action? This is the subject of the fourth assignment of error.

IV.

The Court erred in rendering judgment in favor of the United States.

In support of this assignment of error, we shall endeavor to show—

First. That the Act of July 14th, 1862, was not in force in San Francisco at the time of importation and entry.

Second. That, admitting said Act to have been in force, duties must be paid in cash, and the Government must look to the Collector if he delivers up the goods without receiving payment.

Third. Importers are no longer liable for duties where the goods have been destroyed by accident, and the defendant having sold the goods without notice that they were subject to any further duties, the goods are, in point of law, to be considered as having been destroyed by accident.

Fourth. The decision of the Collector, as to the amount of duty at the time of entry, was final and conclusive so far as the defendant is concerned, no appeal having been taken as required by the statute.

1. The Act of July 14th, 1862, was not in force in San Francisco at the time of importation and entry.

The answer shows that neither the Collector nor the defendant had any knowledge of the passage of said Act, and that no copy of said Act had reached the State of California at the time of the entry and delivery of the goods.

That statutes generally go into effect at the time of their passage, is a proposition which it is unnecessary either to deny or discuss. We contend that revenue laws which affect trade do not go into effect until they are promulgated, and that such promulgation is made by delivering a copy of the law to the Collector. We submit this point upon the authority of the case of the ship *Cotton Planter*, decided by Judge Livingston, and reported in 1 Paine's C. C. R., p. 23. In that case, the broad principle was laid down that as regards trade laws, unless notice of them be brought home to the party charged with violating their provisions, they are to be considered as beginning to operate in the respective collection districts only from the time they are received from the proper department by the Collector. The opinion of the Court is a masterly one, and concludes by saying that "there may be a difference in name, but there is none in reality, between an *ex post facto* law, which Congress cannot pass, and one whose operation is so universal and instantaneous."

2. But admitting the Act of Congress of July 14th, 1862, to have been in force, the credit system having been abolished, the defendant is not liable, and the Government must look to the Collector.

It was held at an early day by the Federal Courts,

that the consignees of goods were personally liable for duties, and that such duties constituted a debt against them. Since the time when those decisions were made, the whole system of collecting duties has been changed. The law now knows nothing of a debt or credit for duties, except in the particular cases which form exceptions to the general law. Mr. Secretary Guthrie, in his annual report, which will be found on page 14 of Appendix to the "Congressional Globe," 34th Congress, 3d session, says:

"In the system adopted in 1789 for the collection of the revenue from customs, importers were allowed credit for the duties upon giving bond and security for the payment at a future day. These bonds accumulated, and during commercial difficulties many of the parties failed, and the bonds were put in suit. This class of debt also became embarrassing to the Government and the bonds unreliable as revenue. The system was changed in 1842, when the cash system was introduced, followed in 1846 by the addition of the warehouse system; and now in the collection of the revenue from customs and lands, there is no loss from from credit sales or credit duties. The only loss to be encountered is the defalcation of Collectors and Receivers, who give security for the faithful discharge of their duties, and the due payment of all the public money they receive."

The debates in Congress in 1842 also clearly show that it was the intention of the framers of the law to cut up the credit system by the roots, so that, in the language of Mr. Guthrie, "the only loss to be encountered is the defalcation of Collectors and Receivers."

The only credit which the law now authorizes is where the goods are warehoused under the law of 1846. The Collector cannot be heard to say that he voluntarily delivered the goods without collecting the duties. If the full amount of the duties had been paid to the Collector, it would not be pretended that the importer would be liable to the Government, in case the Collector failed to pay over the money to the proper officer. There was no mistake of fact in this case. In the case of Longfellow *v.* Quimby, (29 Maine, 196,) a tax collector at a sale had taken a note from the purchaser, where the law required the sale to be for cash, and it was held that the title passed to the purchaser, and that the collector was chargeable with the amount of the purchase money exactly as if he had received the money, and that the taking of the note was a matter between the collector and the purchaser.

3. Importers are no longer liable for duties where the goods have been destroyed by accident, and the defendant having sold the goods without notice that they were subject to any further duties, the goods are in point of law to be considered as having been actually destroyed by accident.

The credit system having been abolished, many of its incidents have also been abolished. Thus, it was formerly held that there being a personal liability for the duties, that liability continued although the goods themselves may have been destroyed. The recent legislation of Congress goes far to establish the principle that where the goods have been destroyed or injured,

in whole or in part, the duties are to be abated. By the Act of 28th of March, 1854, sec. 8, it is provided, that in case of the "actual injury or destruction, in whole or in part, of any goods, wares, or merchandise, by accidental fire or other casualty, while the same remains in the custody of the officers of the customs, in any public or private warehouse under bond, or in the Appraiser's stores undergoing appraisal, in pursuance of law or regulations of the Treasury Department, or while in transportation under bond from the port of entry to any other port in the United States," the proper officers shall "abate or refund, as the case may be, out of any other moneys in the treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon, and likewise to cancel any warehouse bond or bonds, or enter satisfaction thereon, in whole or in part, as the case may be."

It is a rule of construction of remedial laws, that what is within the mischief is within the remedy. In this case, the importer, without any notice or knowledge of the Act raising the duties, sold the goods. He had no opportunity of including the increased rate of duty in the price of the goods. The loss was as actual and as accidental as if it had been occasioned by fire. The loss was literally occasioned by "other casualty."

4. The decision of the Collector, as to the rate of duty at the time of entry, was final and conclusive, so far as the importers were concerned.

By the Act of 3d of March, 1857, sec. 5, it is provided as follows:

"On the entry of any goods, wares, and merchandise, imported on and after the first day of July, 1857, the decision of the Collector of the customs at the port of importation and entry, as to their liability to duty or exemption therefrom, shall be final and conclusive against the owner, importer, consignee, or agent of any such goods, wares, and merchandise, unless the owner, importer, consignee, or agent shall, within ten days after such entry, give notice to the Collector, in writing, of his dissatisfaction, setting forth distinctly and specifically his grounds of objection thereto, and shall, within thirty days from the date of such decision, appeal therefrom to the Secretary of the Treasury, whose decision on such appeal shall be final and conclusive; and the said goods, wares, and merchandise shall be liable to duty or exempt therefrom accordingly, any Act of Congress to the contrary notwithstanding, unless suit shall be brought within thirty days after such decision for any duties that may have been paid, or may thereafter be paid on said goods, or within thirty days after the duties shall have been paid in cases where such goods shall be in bond."

It will be observed that the decision of the Collector is final as to the "liability to duty or *exemption therefrom*." The Collector having decided, at the time of entry, that these goods were *exempt* from any higher rate than that which was paid, such decision is, by the very terms of the statute, final, no appeal having been taken, or action brought within the time specified.

That the Collector did so decide appears not only from the allegations of the answer, but also by the presumption that the Collector performed the duty required of him by law. Any other construction would

deprive the importer of his right of appeal under the statute, and would subject him to the inconvenience of being called on by the Collector in every case, after the goods have been sold, to pay an additional duty, although he may have been told that the whole amount of duty had been paid. The only effectual way to prevent this mischief is for the Government to hold the Collector responsible.

V.

The Court below erred in rendering judgment for the United States, "payable in gold coin of the United States for duties." In support of this assignment of error, we shall endeavor to maintain the following propositions:

1. Duties are not, in terms, payable in gold coin of the United States.

2. After the goods were delivered to the importer, his liability, if any, was that of a mere debt for current money, and could have been discharged by the payment of such money.

3. Judgments cannot be made payable in any particular coin.

4. A judgment is a merger of the original demand, and the insertion of the words "for duties" is error.

1. Duties are not in terms payable in gold coin. They are payable in "money of the United States."

By Section 74, of the Act of 2d of March, 1789, it is provided as follows: "All duties and fees to be collected shall be paid in money of the United States, or

in foreign gold and silver coins at the following rates," etc. By Act of 21st of February, 1857, it is provided that "all former Acts authorizing the currency of foreign gold and silver coins, and declaring the same a legal tender in payment for debts, are hereby repealed."

The law as it now stands reads thus: "All duties and fees to be collected shall be payable in money of the United States."

The fact that there may be a certain currency which is not a legal tender for duties is rather an argument that such currency is not money. It does not operate to repeal the statutes cited. But even if it were true that duties are payable in coin, they are not payable in gold coin exclusively. Silver is a legal tender to a certain amount, and indeed it would be physically impossible to pay the whole of this judgment in gold coin exclusively, there being no gold coin of the denomination of ten cents.

2. There are, however, objections to this judgment of a more solid and fundamental character. We believe that it is based upon an entire misconception of the nature of the liability of importers for duties. We have endeavored to convince the Court that the defendant in this case is not liable at all. We shall now endeavor to show that if liable at all, his liability is a mere debt for current money, and may be discharged by the payment of such money.

For the purposes of this action, it is also necessary to limit our inquiries. It is not necessary here to discuss the general question whether an importer or other citi-

zen may be compelled by the judgment or decree of a Court to perform a duty. This is certainly not a suit to compel the specific performance of an obligation. It is not a *mandamus*. It is an action at law—an action of debt, to recover the amount of certain duties alleged to be due by the defendant to the United States. It could not be pretended for a moment that the Federal Courts have any power to compel the specific performance by a private individual of any duty or obligation, except in cases of equity jurisdiction. It is, however, entirely unnecessary to discuss that question. We need only observe that this is not such proceeding.

Indeed, it is only upon the theory of a *debt* due by the importer to the Government that a personal action, and particularly an action of debt, can be at all supported. It has been repeatedly so decided by the Federal Courts.

"In respect to the duties payable upon the importation of goods," said Mr. Justice Story, in *United States* v. *Lyman*, 1 Mason R., 498, "the usual proceeding, where no specialty has been taken as security, is an information of debt, which is emphatically called the king's action of debt. * * * The general principle upon which these informations rest is, that in the given case the common law or the statute creates a debt, charge, or duty, in the party, personally to pay the duties immediately upon the importation; and that, therefore, the ordinary remedy lies for this as for any other acknowledged debt due to the crown, etc. And it has been repeatedly settled, both here and in England, that under such circumstances the duties are a debt accruing

to the government from the time of the actual importation."

The same learned judge, in delivering the judgment of the Supreme Court of the United States, some years afterward, in *Meredith* v. *The United States*, 13 Peter's R., p. 493, said:

"The first question is, whether Smith and Buchanan were ever personally indebted for these duties, or, in other words, the importers of goods do, in virtue of the importation thereof, become personally indebted to the United States for the duties due thereon. It appears to us clear, upon principle, as well as upon the obvious import of the provisions of the various acts of Congress on this subject, that the duties due upon all goods imported constitute a *personal debt* due to the United States."

This language is clear and unmistakable. Our theory upon this point is strengthened by considering the forms of action at common law. It cannot be pretended that there is any action at common law for the recovery of money which is not an action for damages.

The old forms of pleading are still used in many of the Circuits, and it cannot be pretended that by the introduction of the new system of pleading in the Circuits for California, plaintiffs have acquired any new remedies. Even in the action of debt, which approaches nearer than any other an action for specific performance, interest is properly recoverable as damages, and the action of debt would not lie for any specific coin, but only for current money. That unpaid duties, so far as they are recoverable by action, are a debt, ap-

pears further from the fact that they bear interest, which they would not do as a mere tax. [Shaw *v.* Pickett, 26 Vt. R., 482.]

We are aware that it has been in some States decided that a tax is not a debt. In most of the cases, however, where it has been decided that a tax is not a debt, it has also been held that no personal action can be maintained to recover it. [The City of Camden *v.* Allen, 2 Dutcher's R., 398; Pierce *v.* The City of Boston, 3 Met. R., 520; Shaw *v.* Pickett, 26 Vt. R., 482.]

It is sufficient for our present purpose to observe that the Federal Courts have uniformly held duties to be debts, and that an action of debt is the proper proceeding for their recovery.

We have said that duties are debts, and yet it is not strictly correct to say so. When the goods are delivered to the importer, duties are converted into debts. They are not, after such delivery, any longer duties. They become debts. We do not pretend that duties are originally merely a debt. They are also a species of tax. In their capacity of tax, they operate *in invitum*, and are a lien upon property; and the property, before delivery to the importer, may be sold by the Government, as provided by law, to satisfy the duties; and as Government may declare in what coin or species of property taxes shall be paid, so, if they are unpaid, it may at a sale thereof receive nothing in payment but the particular currency or species of property in which taxes may be reserved. Government might, if it so elected, require duties to be paid in tea, rice, or tobac-

co, and demand, at a Collector's sale, payment to be made in the specific property which the law requires. So, if Congress should so enact, the Government might reserve for duties a tenth or other proportion of the property imported. But it is very clear that if the goods are delivered to the importer, the claim of the Government is of a very different nature. If the duty should be reserved in property other than money, then the claim of the Government is no longer for the particular article of property. No action would lie to recover a box of tea or a hogshead of tobacco, or any particular coin in which duties might be reserved. The importer, if liable at all, would become a debtor for the value of the duty expressed in the current money of the country. If the duty be payable in such current money, then the amount of such duty would exactly represent the amount of the debt due by the importer. If, on the other hand, the duty should be reserved in any other property, then the amount of the debt would be the value of the property, expressed in the current money of the country. In other words, the Government would have lost its claim for duties, *as such*, and would have acquired a claim for pecuniary compensation.

It follows that the Government is armed with two remedies, each distinct from the other:

First. The right to enforce the lien on the goods by an *ex parte* sale, and at such sale to require payment in the specific coin or property in which the duty is payable; and

Secondly. To sue the importer in an action of debt, to recover the pecuniary value of the duty.

The importer has no right, by a tender of any other thing than the particular coin or property which the law requires, to enjoin a sale of his goods. This would deprive the Government of its right to duties as such, and abridge the exercise of the first named remedy. The power of the Government, provided it has not lost its lien on the goods, is full and complete to require and compel payment in the specific coin. It has the power, in the language of the Constitution, "to lay and collect duties." In this point of view, the case of *Perry* v. *Washburne*, 20 Cal., 318, was very properly decided. In California, the statute required taxes to be paid in coin, and it was decided in that case that the Court would not by mandamus compel the Tax Collector to receive anything but coin. The question would have been very different if an action had been brought to recover the amount of the taxes from the owner.

It follows, therefore, that after the Government has lost its lien upon the goods, inasmuch as duties are payable in money, there is a mere debt due by the importer to the Government for the amount of the duties; and that such debt, not being strictly speaking *duties*, may be discharged by any lawful money of the United States.

3. It will thus be perceived, that in rendering this judgment, the nature of the defendant's liability has been entirely misapprehended. We, therefore, the

more confidently invite the attention of the Court to the peculiar form of the judgment—"payable in gold coin of the United States, for duties."

"By Littleton it appeareth," says Lord Coke, "that the formes of judgments, pleas, and other legal proceedings doe much conduce to the right understanding of the Law."

The "formes" of judgments for money, ever since Courts of Common Law began to exist, has been simply for money, without specifying the commodity from which it may chance to be manufactured. If we are asked for authority, we refer to every case that has ever been decided. From this uniformity, we infer this to be the "right understanding of the law," to wit: that the purpose of a judgment is to liquidate as well as to determine the plaintiff's demand, and to express it in current money. And as this judgment is without precedent, it is, so far, against law.

"An universal silence," said Buller, J., in *Le Caux* v. *Eden*, "in Westminster Hall, on a subject which so frequently gives occasion for litigation, is a strong argument to prove that no such action can be maintained."

It has been expressly decided that even where a contract is, in terms, payable in gold coin, courts of law have no power to render a judgment payable in such coin, or otherwise than for current money. [See particularly the cases of Wood *v.* Bullens, 6 Allen (Mass.) R.; 516; Schoenberger *v.* Watts, 1 American Law Reg. (new series), p. 558.

4. If it was error to make the judgment "payable

in gold coin of the United States," what shall we say of the statement in the judgment that it was "for duties?" If there be one principle of law more elementary than another, it is that a judgment is a merger of the plaintiff's demand. If the judgment is "payable in gold coin of the United States," the addition of the words "for duties" is, to say the least, unnecessary. If the judgment is for so much current money, then the effect of these words, so far as they have any, is practically to prevent a merger of the plaintiff's demand, and to keep alive its original cause of action. It implies that a judgment for one cause of action is payable in a different currency from that in which others are payable. It has not hitherto been the custom of courts of law, in their judgments, to inform the public what the extent of the original cause of action was. If the Court cannot render judgment for gold coin, it cannot indirectly attain that end by adding the words "for duties." We have a right to a judgment absolute on its face. The Court must tell us categorically what we must do, and not leave our liabilities to the construction of the Marshal. The claim for the duties becomes merged in the judgment, and when we pay the judgment we do not pay duties. What would be thought of a judgment in these words, "that the plaintiff recover from the defendant the sum of —— dollars for a note, payable in gold coin?"—which, being expressed in plain English, means this: "Although we cannot directly give you a judgment payable in gold coin, yet if you refuse to take any other coin we will not inter-

fere." In other words, a judgment for duties is not final, but interlocutory, and is merely rendered to convert the Marshal into a Collector of Customs, and to deprive the citizen of all power of resistance.

No question arises in this case as to the constitutionality of any Act of Congress making treasury notes a legal tender in payment of debts. Such question can only arise after some tender of such notes has been made.

John M. Harlan
Of Counsel
Amos L. Gould
Of Counsel for Def't in Error

APPENDIX.

In the Circuit Court of the United States of America, in and for the Northern District of California.

THE UNITED STATES, Plaintiff,

v.

SUN CHEONG KEE, Defendant.

COMPLAINT.

The above named plaintiff complains against the above named defendant, resident of said district, and for cause of action states as follows:

That defendant, on or about the 12th day of August, 1862, imported from the port of Hongkong, in the Empire of China, into the Collection District of California, certain goods, wares, and merchandise, consisting of vegetables, fire crackers, rice, etc.;

That said goods and merchandise were subject to a duty of fourteen hundred and fifty-two 55-100 dollars, in gold coin of the United States, payable to plaintiff upon being so imported as aforesaid;

That said sum of fourteen hundred and fifty-two 55-100 dollars was duly demanded by plaintiff from said defendant, and the same was not paid to plaintiff, except the sum of two hundred and eleven 70-100 dollars;

Wherefore plaintiff demands judgment against defendant for said sum of twelve hundred and forty 85-100 dollars, in gold coin of the United States, with legal interest and costs.

WM. H. SHARP, U. S. Att'y.

San Francisco, December 14th, 1863.

In the Circuit Court of the United States of America, in and for the Northern District of California.

THE UNITED STATES

v.

SUN CHEONG KEE.

ANSWER.

And now comes the said defendant, Sun Cheong Kee, by James M. Seawell, his attorney, and answering the complaint of the said plaintiff, says:

That on the 13th day of August, A. D. 1862, the said defendant made entry of said goods, wares, and merchandise, with the United States Collector of Customs at and for the Port of San Francisco; that the said Collector, at the time of said entry, decided that said goods, wares, and merchandise, were liable to a duty of two hundred and eleven 70-100 dollars, and were exempt from any higher or greater duty than said sum of two hundred and eleven 70-100 dollars; that he, the said defendant, has never given notice in writing or otherwise to said Collector of his dissatisfaction with said decision, and has never appealed from said decision;

That on the said 13th day of August, A. D. 1862, the said defendant paid the said sum of two hundred and eleven 70-100 dollars to said plaintiff;

That afterward, to wit, on the said 13th day of August, A. D. 1862, the said Collector, and the U. S. Naval Officer at and for the said Port of San Francisco, gave a permit to the said defendant for the delivery to him of said goods, wares, and merchandise, and certified that said defendant had paid the duties thereon;

That afterward, to wit, on the said 13th day of August, A. D. 1862, the said goods, wares, and merchandise were delivered by the proper officer of the United States to the said defendant;

That afterward, and before the first day of September, A. D. 1862, all of the said goods, wares, and merchandise were sold by the defendant, without any notice or knowledge that the same, or any part thereof, were subject to any higher rate or amount of duty than that already paid as aforesaid;

That all of said goods, wares, and merchandise were sold by the said defendant before any further or greater sum than said sum of $211 70 was demanded by said plaintiff, or by any one for said plaintiff, and that no further or greater sum than said sum of $211 70 was demanded by said plaintiff, or by any one for said plaintiff, before the 15th day of September, 1862.

That by the laws in force prior to the first day of August, A. D. 1862, the said goods, wares, and merchandise were subject to a duty of two hundred and

eleven 79-100 dollars and no more; that if the Collector, at the time of said decision, had estimated the amount of said duties according to the provisions of the Act of Congress, passed July 14th, 1862, entitled "An Act increasing temporarily the Duties on Imports and for other purposes," they would have amounted to the said sum of $1,452 55; that no copy of said last mentioned Act had reached the State of California, and the provisions thereof were unknown to the people of the State of California at the time when said goods were sold as aforesaid;

That when said defendant sold said goods, he did not include as a part of the price any further duties than he had already paid as aforesaid;

That if said defendant is compelled to pay the amount of plaintiff's demand in this action, he will sustain a loss of $1,240 85;

Wherefore, the said defendant says that the said plaintiff ought not to have or maintain the aforesaid action.

J. M. SEAWELL,
Attorney for Defendant.